

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Lisa Way Smith,

Plaintiff,

vs.

Michael J. Astrue, Commissioner of Social
Security Administration,

Defendant.

C.A. No. 3:10-66-HMH-JRM

OPINION & ORDER

This matter is before the court on a motion for attorney's fees pursuant to 42 U.S.C. § 406(b). The Plaintiff seeks attorney's fees in the above-captioned social security action in the amount of Twelve Thousand Five Hundred Twenty-Eight Dollars and Seventy-Five Cents (\$12,528.75). See 28 U.S.C. § 2412(a). The Commissioner does not object to the request for attorney's fees.

Based upon a review of the petition and the factors to be considered in awarding attorney's fees in a social security case,¹ the court finds that an award of \$12,528.75 is reasonable. See *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002) ("[Section] 406(b) calls for court review of [contingency fee] agreements as an independent check, to assure that they yield reasonable results in particular cases."). Pursuant to a contingency fee agreement, the Plaintiff agreed to pay counsel 25 percent of any past-due benefits. In compliance with 42 U.S.C.

¹ Courts have considered the following factors in awarding attorney's fees: "(1) novelty of questions and skill required, (2) customary fees, (3) contingency of fee, (4) nature and length of professional relationship, and (5) amount involved and results obtained." *Craig v. Sec'y, Dep't of Health and Human Servs.*, 864 F.2d 324, 326 (4th Cir. 1989), abrogated on other grounds by *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002).

§ 406(b)(1)(A), counsel's requested fee does not exceed 25 percent of any past-due benefits.

The requested attorney's fee is reasonable² given that Plaintiff's counsel expended 53.3 hours working on this matter at the court level. Wrenn v. Astrue, 525 F.3d 931, 937 (10th Cir. 2008) (noting that under § 406(b) the court makes fee awards only for work done before the court). Further, Plaintiff's counsel achieved a successful result without any unreasonable delay. In light of counsel's specialized skill in social security disability cases, the attorney's fee award does not amount to a windfall. Cf. Brown v. Barnhart, 270 F. Supp. 2d 769, 772-73 (W.D. Va. 2003).

It is therefore

ORDERED that Plaintiff's amended motion for attorney's fees, docket number 25, is granted, and Plaintiff is awarded attorney's fees in the amount of Twelve Thousand Five Hundred Twenty-Eight Dollars and Seventy-Five Cents (\$12,528.75). It is further

ORDERED that Plaintiff's motion for attorney's fees, docket number 24, is denied as moot.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
September 30, 2011

² "In exercising [the court's] discretion, . . . [the court] must adhere to established principles of law, and it must clearly explain its reasons for the award [of attorney's fees]." Craig, 864 F.2d at 328.